

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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DONALD ROTH, :
Petitioner, :
-against- :
UNITED STATES OF AMERICA, :
Respondent. :
-----x

ORDER
09 Civ. 8712 (SCR) (LMS)

Lisa Margaret Smith, U.S.M.J.

On March 3, 2010, the Court Clerk filed the Petitioner's motion, entitled "Supplemental Motion to Disqualify, Change Venue, Appoint Counsel and For Bail" as docket #10. These jointly filed motions have been referred to the undersigned for disposition. For the reasons set forth herein, they are denied.

The only argument put forth in the submission of Petitioner is that the Honorable Stephen C. Robinson, to whom this case was then assigned, has a personal relationship with the Honorable Cathy Seibel, who, prior to her appointment to the bench, was an Assistant United States Attorney and, in that role, had prosecuted Petitioner in the underlying criminal case, United States v. Bryant, et al., 02 Cr. 1503 (SCR). Petitioner argues that this personal relationship presented an appearance of impropriety which required Judge Robinson's disqualification. The Motion to Disqualify Judge Robinson is now moot, as Judge Robinson has resigned from the bench, effective August 11, 2010. It is therefore denied as moot.

The Motion for a Change of Venue is not fully explained in this submission; the only

argument in support of the Motion for a Change of Venue is that Judge Seibel is the only other full-time judge in the White Plains Courthouse, where Judge Robinson was assigned, and that therefore this case should be reassigned to a judge in the Manhattan Courthouse. Petitioner is incorrect. There is another full-time United States District Judge assigned to the White Plains courthouse, and several visiting judges from other districts will, from time to time, take on cases assigned to the White Plains Courthouse. There is no question that Judge Seibel cannot handle this case, but there is no reason why another district judge cannot be assigned to handle the matter. This Motion to Change Venue is therefore denied.

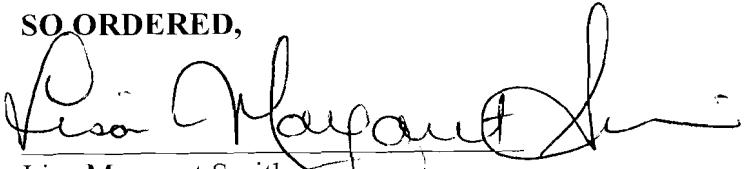
No basis is given in this motion for the Motion to Appoint Counsel. By Decision and Order filed 12/23/2010, docket #7, another application for appointment of counsel made by Petitioner was denied by the undersigned, based on the factors set forth in Hodge v. Police Officers, 802 F.2d 58 (2d Cir. 1986). There is nothing new asserted in this Motion, indeed, there is nothing asserted at all in support of this part of the Motion. The Hodge factors are still not met, and there is therefore no basis for altering my earlier ruling. The Motion for Appointment of Counsel is denied.

The Motion for Bail is likewise presented without argument or support. Even if bail were available, it would be Petitioner's burden to establish that he was entitled to bail. He has offered no support in support of that Motion, and therefore it is denied.

For the foregoing reasons, it is therefore ORDERED that Petitioner's Motions as set forth in Docket #10 are denied

The Clerk is directed to terminate Docket #10.

Dated: August 20, 2010
White Plains, New York

SO ORDERED,

Lisa Margaret Smith
United States Magistrate Judge
Southern District of New York

Copies of this Order have been sent to:

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